IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

No. 1034

CHESTER STEWART, and BURL BOONE,
Plaintiffs-Appellants,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS, NORTHWESTERN STEEL & WIRE COMPANY, and LUMBERMEN'S MUTUAL CASUALTY COMPANY,
Defendants-Appellees.

On Appeal From The Supreme Court Of The State Of Illinois.

MOTION TO DISMISS

The appellees move to dismiss the appeals of Stewart and Boone for want of any federal question of substance.

JURISDICTION

This Court's jurisdiction has been invoked under 28 U.S.C. §1257(2), in both the *Stewart* and *Boone* cases.*

The supposed federal question of substance arises from the following circumstances. On July 1, 1965, in cases arising under the Illinois Workmen's Compensation Act and under the Illinois Workmen's Occupational Diseases Act, the statutory appeal period—which "shall be jurisdictional and shall not be subject to any extension" (Ill. Rev. Stat., ch. 48, §§ 138.19 (f) (2), 172.54 (f) (2); quoted in J.S. App. B)—was shortened for appeals from orders of the state circuit courts reviewing decisions of the Illinois Industrial Commission. The appeal period was shortened from 60 days to 30 days, by Acts which were passed by the Illinois General Assembly in June, 1965, were approved by the Governor on June 30, 1965, and became effective July 1, 1965. (1965 Ill. Session Laws, 1128, 1149.)

On August 9, 1965, the Circuit Court of Whiteside County, Illinois, in both the *Stewart* and *Boone* cases found "that the decision of the Industrial Commission is supported by evidence and is so affirmed." (Stewart R. 2; Boone R. 2.) Fifty-eight days later, on October 6, 1965, Stewart and Boone appealed to the Supreme Court

---

* The two cases—Stewart's arising under the Illinois Workmen's Compensation Act, and Boone's arising under the Illinois Workmen's Occupational Diseases Act—were handled separately below before the arbitrator of the Industrial Commission of Illinois, the full Industrial Commission, the Circuit Court of Whiteside County, and the Supreme Court of Illinois. However, the cases now present the same issue for this Court's consideration, and they have been consolidated by the Clerk as No. 1034.

of Illinois. (Stewart R. 3; Boone R. 3.) The appellees filed motions to dismiss the appeals "for want of jurisdiction as the Notice of Appeal was filed more than 30 days after the entry of the Whiteside County Circuit Court order." (Stewart R. 6; Boone R. 6.) After receiving briefs and hearing oral argument on behalf of the appellants, the Supreme Court of Illinois dismissed the appeals by *per curiam* orders. (Stewart R. 20; Boone R. 12.) The appeals to this Court followed.

There is no suggestion of any irregularity in the promulgation of the legislation which shortened the time for appeal. The legislation was enacted in the same manner as other Illinois legislation, and published in the same way other acts are published. In Illinois pending bills, the legislative journals and an official weekly bill digest are printed, and copies may be obtained. (Ill. Const., Art. IV, §§ 10, 13; Cohn, *The Process of Legislation,* 1963 Ill. L. Forum, 27, 30, 35-36.) Counsel for the appellants had knowledge that legislation was passed in June 1965 amending the Workmen's Compensation and Occupational Diseases Acts, but did not learn of the amendment to the appeal provisions until the appeal period had run. (See Argument, *infra.*)

On this record, we submit, the appellants' lack of knowledge of the contents of the bills shortening the appeal period raises no substantial question of due process. Moreover, in the state court, the appellants raised their claim as a claim of *denial* of due process. (Stewart R. 12; Boone R. 11:27-28.) Such a claim should be pursued by certiorari under 28 U.S.C. § 1257(3), and not by appeal. (E.g., *Hanson* v. *Denckla,* 357 U.S. 235, 244.) Any supposed denial of due process is a matter to be considered under the standards applicable to certiorari. (E.g., Rule 19.)

QUESTION PRESENTED

Were the appellants denied due process by a legislative reduction in the appeal period for Illinois Workmen's Compensation and Occupational Disease Cases, under the circumstances presented here,

—where the reduction in appeal period was made prior to the commencement of appellants' time for appeal,

—where the legislation was promulgated in the normal course and printed copies of the amendatory bills were obtainable,

—and where appellants' counsel knew of the amendatory legislation but did not learn that its contents included a change in the appeal period from 60 to 30 days?

THE QUESTION IS WITHOUT SUBSTANCE

These appeals are here on the contention that Boone and Stewart, or their counsel, did not have a reasonable chance to know that their appeal period in the Illinois courts had been shortened from 60 to 30 days. This contention is without substance for several reasons.

1. Appellants' counsel admittedly knew that legislation had been passed in June 1965 amending the Illinois Workmen's Compensation and Occupational Diseases Acts. (Stewart R. 15; Boone R. 11:32.) However, counsel did not know the amendatory bills included provisions shortening the time for appeal. The claim presented, therefore, is simply a claim that appellants' counsel did not know or learn of all the contents of the amendatory bills, although he knew such bills had been enacted in June 1965, before the time for appeal expired on September 8, 1965.

2. It is admitted that appellants' counsel actually had a role in the preparation of the legislation in question.

The record shows (Stewart R. 15; Boone R. 11:32) that counsel "participated in several sessions of the Industrial Commission Labor-Management Committee created to amend the Workmen's Compensation and Occupational Diseases Acts." This Labor-Management Committee was the group that negotiated the agreed bills which, among other things, amended the Compensation and Occupational Diseases Acts so as to provide for a 30 day appeal period. Participants in the Committee's negotiations had access to drafts of the agreed bills.

3. The contents of the amendatory bills were also available through normal channels of legislative information. In Illinois bills are printed. All actions at each stage of passage are published in the journals of the Legislature, which are printed as well. An official bill digest is also printed, weekly. (Ill. Const., Art. IV, §§10, 13; Cohn, *The Process of Legislation*, 1963 Ill. L. Forum 27, 30, 35-36.) The printed bills, journals and digest are available. Copies can be obtained from the clerical staffs of the Illinois House and Senate. From the standpoint of official publication and availability of legislative enactments, the Illinois system is similar to that of the United States Congress.

4. Aside from examining the contents of the amendatory legislation, news of the change in appeal period was available from other sources. The official bill digest, printed weekly, described the legislation in question (S.B. 1267 and S.B. 1268) very briefly, but did state, "Revises method of appeal." (See Appendix B, *infra*.) News of the change to a 30 day appeal period also was widely circulated to Illinois lawyers well before September 8, 1965, when Boone's and Stewart's notices of appeal were due.

The Illinois State Bar Association alerted members of the bar to the amendment, in the Bar Association's civil practice and procedure newsletter, *Trial Briefs*, for July-August, 1965. (*Trial Briefs*, vol. XI, nos. 1-2.) This bulletin is reprinted verbatim in Appendix A, *infra*.

5. In view of these circumstances, we submit that the appellants had a reasonable opportunity to learn of the change in appeal period. The sources of information were open, and 70 days elapsed between the approval of the amendatory legislation and the due date for Boone's and Stewart's appeals. The Court should not create a doctrine allowing jurisdictional requirements to be avoided by litigants or lawyers who are unaware of those requirements. "Due process" does not permit unawareness of legal requirements. Such a doctrine would undermine jurisdictional requirements, procedural rules and even substantive duties. Much harsher state procedural requirements than the one involved here have been held to present no federal due process question of substance. For example, a provision for *no* judicial review or appeal from an Industrial Commission's decision in occupational disease cases was held not to present a substantial federal question in *Ohio ex rel. Jonak* v. *White*, 136 Ohio St. 213, 24 N.E. 2d 826, *appeal dismissed*, 310 U.S. 609 (1940).

CONCLUSION

We submit that this appeal presents no federal question of substance. The appeal should be dismissed and, treating the appeal as an alternative prayer for certiorari, certiorari should be denied.

Respectfully submitted,

HARLAN L. HACKBERT,
DOUGLAS F. STEVENSON,
JEREMIAH MARSH,
208 South LaSalle Street
Chicago, Illinois 60604
Counsel for Defendants-Appellees.

HACKBERT, ROOKS, PITTS,
FULLAGAR & POUST
Of Counsel.

APPENDIX A

Excerpts from TRIAL BRIEFS:

(published by the Illinois State Bar Association)

Vol XI Nos. 1-2

July-August 1965

NEW LEGISLATION AFFECTING CIVIL PRACTICE

The 74th General Assembly enacted a number of bills which affect civil practice and procedure, as follows:

Time for Filing Notice of Appeal in Civil Cases Reduced to 30 Days. Section 76 of the Civil Practice Act was amended to provide that notice of appeal must be filed within *30 days* after entry of the judgment appealed from. This provision, which takes effect on January 1, 1966, reduces the time from 60 days. (H.B. 948; approved by Governor on May 19, 1965.)

Time for Appealing in Workmen's Compensation Act and Occupational Diseases Act Cases Reduced to 30 days. Previously, orders of the Circuit Court in cases brought under the Illinois Workmen's Compensation and Occupational Diseases Acts were appealable through writ of error filed within 60 days from the date of the order. By amendments to those Acts, the writ of error procedure has been abolished and appeals will now be perfected by filing notice of appeal with the Clerk of the Circuit Court. The notice of appeal must be filed within *30 days* from the entry of the order appealed from. (S.B. 1267 and 1268.) Approved by Governor and effective June 30, 1965.

APPENDIX B

Final Legislative Synopsis and Digest of the 74th General Assembly of the State of Illinois

(Action on all Bills and Resolutions Received through June 30, 1965)

SB-1267 COLLINS, SPRAGUE, McGLOON, ARRINGTON, DIXON, McCARTHY, LAUGHLIN, COULSON, PETERSON, DOUGHERTY, CRONIN, ROSANDER, HART, LARSON, HATCH, CARPENTIER, TRAYNOR, PETERS, FINLEY, GOTTSCHALK, KINNALLY, GILBERT AND CHERRY

(C48 par 172.42, 172.43, 172.54 2 IRS 54)

Amends Workmen's Occupational Disease Act, Makes same changes corresponding to changes in the Workmen's Compensation Act (SB-1268). Increases treatment of silicosis from 6 months to 2 years. Revises method of appeal. Provides credit to employer for benefits paid.

June 1. Introduced. First reading. Without reference.

June 2. Second reading.

June 8. Recalled to second reading. Amended.

June 10. Third reading. Passed.

June 11. House.

June 14. First reading. Without reference.

June 17. Second reading.

June 28. Third reading. Passed.

June 30. Approved.

SB-1268 COLLINS, SPRAGUE, McGLOON, ARRINGTON, DIXON, McCARTHY, LAUGHLIN, COULSON, PETERSON, DOUGHERTY, CRONIN, ROSANDER, HART, LARSON, HATCH, CARPENTIER, TRAYNOR, PETERS, FINLEY, GOTTSCHALK, KINNALLY, GILBERT AND CHERRY

(C48 par 138.7, 138.8, 138.13, 138.14 and 138.19
2 IRS 34)

Amends the Workmen's Compensation Act. Increases weekly rates and distinguishes between temporary total disability and permanent partial disability. Raises the maximum death benefits and Burial Expense Allowance. Provides new coverage for certain fractures and the removal of specific organs. Increases salaries of the Chairman, Commissioners, Arbitrators and Secretary of the Commission. Revises method of appeal. Provides credit to employer for benefits paid.

June 1. Introduced. First reading. Without reference.

June 2. Second reading.

June 8. Recalled to second reading. Amended.

June 10. Third reading. Passed.

June 11. House.

June 14. First reading. Without reference.

June 17. Second reading.

June 28. Third reading. Passed.

June 30. Approved.